Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of)	
Request for Extension of Time to Construct Digital Facilities)	File No. BEPCDT-20020206ADQ
KXMC-DT, Minot, North Dakota)	ID No. 55685
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)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 12, 2003 Released: March 13, 2003

By the Chief, Media Bureau:

- 1. The Media Bureau (the "Bureau") has before it a petition for reconsideration filed by Reiten Television, Inc. (Reiten), licensee of KXMC-DT, Minot, North Dakota, seeking reconsideration of the Media Bureau's letter of June 3, 2002, denying its request for an extension of time to construct the digital facilities for KXMC-DT and admonishing Reiten for failing to meet the May 1, 2002, construction deadline for DTV facilities. For the reasons stated below, we deny the petition.
- 2. In its petition, Reiten argues that the Bureau (1) failed to consider the unique circumstances facing a network of satellite stations in a thinly populated market; (2) ignored Reiten's good faith efforts to meet the construction deadline; (3) failed to provide due process by not providing adequate notice of its intent to impose admonishments; and (4) failed to afford similarly situated parties similar treatment.
- Reiten relies on essentially the same facts in its first two arguments. KXMC is part of a four-station group that comprise a satellite network serving the Minot-Bismark-Dickinson DMA. Reiten contends that the Bureau failed to consider the special circumstances it faced in constructing this network of satellite stations and failed to consider its efforts to commence DTV service. Among other things, Reiten argues that the expense involved in constructing its network is unusually burdensome. As discussed in the Bureau's original decision, Reiten did not submit financial materials that adequately explained its existing financial condition or its financial ability to meet its construction goals. Absent that information, the Bureau could not grant an extension based on financial hardship. Reiten also failed to demonstrate non-financial reasons that were sufficient to justify its delay. At the time of its extension request, Reiten had not even finalized an agreement for the use of KXMC's planned tower site. Although Reiten had discussions with a local public broadcaster about sharing a tower, the parties had not reached an agreement at the time of the extension request. The lack of this agreement made Reiten's projections regarding construction and commencement of service extremely speculative. Furthermore, Reiten failed to adequately address the feasibility of building a reduced facility and operating pursuant to special temporary authority. Finally, Reiten's discussion of its efforts to commence digital operations primarily concerned its efforts at another station in its satellite network. Those efforts are not relevant to Reiten's failure to meet its deadlines at

KXMC. Under these conditions, the Bureau was justified in denying the extension request.

- 4. Reiten argues that the Bureau failed to give sufficient notice that it would admonish parties who failed to meet the DTV construction deadline. Admonishment is not an unusual or excessively punitive remedy, but rather is a penalty regularly imposed in a variety of contexts for failure to abide by Commission requirements. In this context, Reiten failed to comply with a Commission imposed build-out requirement. Its apparent expectation that it would be permitted to do so without ramifications was baseless and mistaken. As a result, Reiten's contention that it was denied "due process" when it received an admonishment for failure to comply with the build-out requirement is without merit. Reiten should note, however, that if it continues to miss deadlines imposed by the Commission on its DTV build-out, it will be subject to additional sanctions.
- 5. Finally, Reiten argues that similarly situated parties were not given similar treatment. Reiten contends that other stations in the same market that operate satellite networks similar to Reiten's were granted extensions, including two other stations in Reiten's own satellite network. Unlike the situation with its stations that received extensions, Reiten had not even finalized an agreement that it would be able to use its proposed tower as late as July 2002. This created a level of uncertainty that undermined any claims Reiten made regarding completion of the station. We, therefore, reject Reiten's contention that it was treated differently than similarly situated parties.
- 6. ACCORDINGLY, IT IS ORDERED, THAT the petition for reconsideration filed by Reiten Television, Inc., seeking reconsideration of the Bureau's letter of June 3, 2002, which denied Reiten's request for an extension of time to construct the digital facilities for KXMC-DT and admonished Reiten for failure to meet the May 1, 2002, construction deadline for digital television facilities IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

W. Kenneth Ferree Chief, Media Bureau

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¹ See, e.g., Davidson County Broadcasting, 12 FCC Rcd 3375 (1997)(failure to comply with EEO rules); Rainbow Broadcasting, 14 FCC Rcd 11099 (1999)(failure to obtain Commission consent prior to replacing authorized antenna); Black Media Broadcasting, 16 FCC Rcd 3374 (2001)(broadcast of commercials on noncommercial station).